UNION SECURITY AND THE NATIONAL LABOR RELATIONS ACT OF 1947

by

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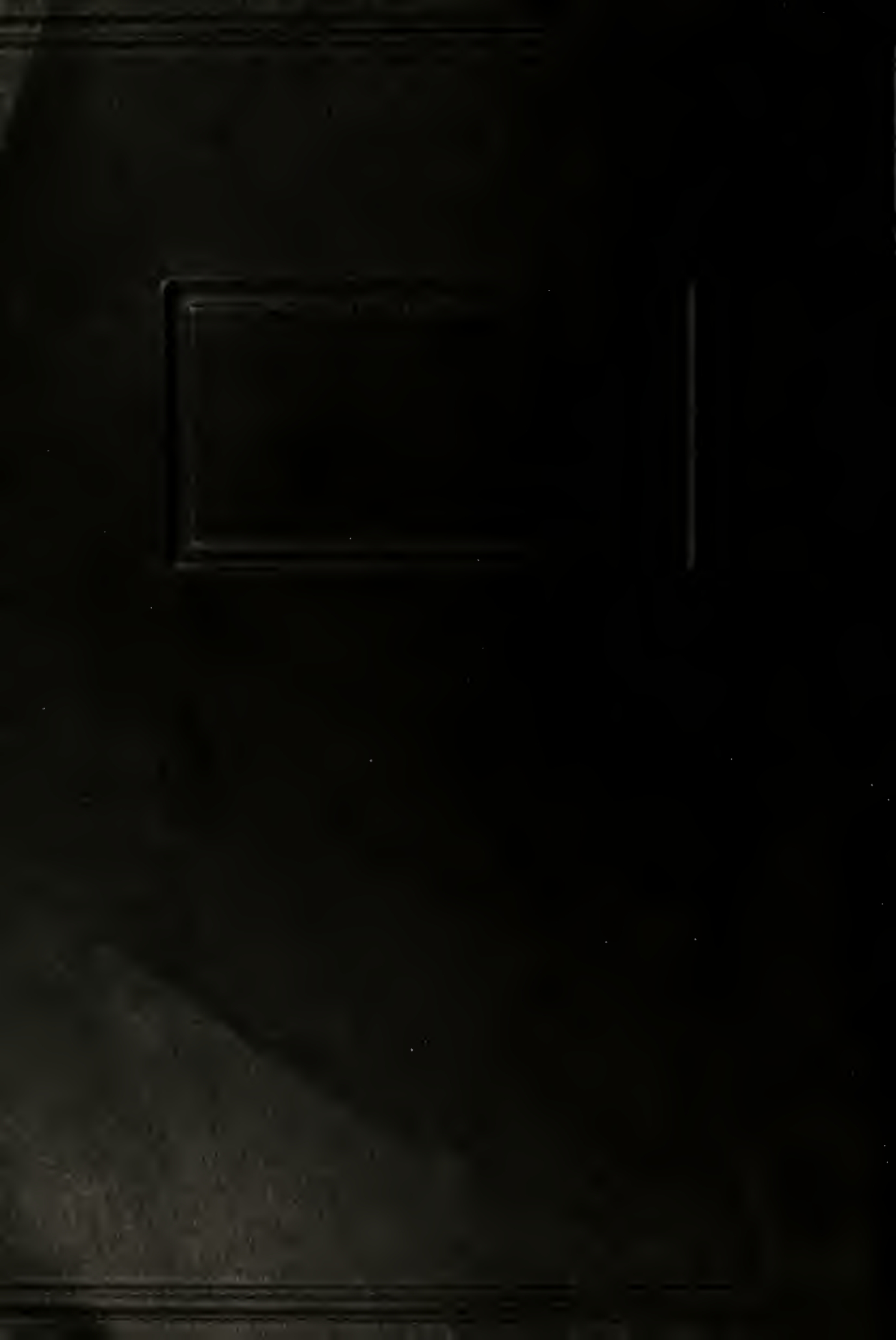

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By

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PREFACE

The question of union security has been a disputed topic for many years and the controversy still rages. Union security agreements are instruments which require union membership as a condition of initial or continued employment. Union security arrangements exist in many forms; this paper is intended to provide the background and basis of the issue.

Chapter I begins with a discussion of the labor movement and the relationship of the worker and a union. Chapter II describes union security in its various forms. In Chapter III an examination of the Taft-Hartley Act is undertaken with specific reference to its impact on the negotiation of union security provisions. Chapters IV and V are devoted to an examination of states' right-to-work legislation.

W.J.G.

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CHAPTER I

INTRODUCTION

Brief History of Trade Unions

Unionism in America has a long history which started in the principal industrial centers along the Atlantic coast. An estimate made in 1836 showed that in the five industrial centers there were 300,000 members in 160 local unions.[1] In 1850, due to the expansion of the market, the first national union of workers in a single craft came into existence. This first national union of workers in a single craft was made up of typographers; some unions that followed were:

1853, the journeymen stonecutters

1854, the hatters

1858, the iron molders

1863, the locomotive engineers

1864, the cigar makers

1865, the bricklayers and masons.[2]

At the turn of the century, union membership was nearly fifty percent less than what it was in 1887 and the American Federation of Labor

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[1] E. Wight Bakke and Clark Kerr, Unions, Management and the Public (New York: Harcourt, Brace and Company, 1949), p. 58.

[2] Ibid.

claimed about 250,000 members.[1] With the onset of a depression in 1904, wages were reduced, many trade agreements were broken, and unfavorable punitive antiboycott decisions in the case of the Danbury Hatters, the Buck's Stone and Range case, and the MacNamara case in 1911 caused membership in unions to drop sharply until activity was again renewed by the economic surge of 1910-1914. In addition to the economic expansion of the period, the coal miners and the clothing and textile workers helped increase union membership by their organization efforts.

There were many events in the early period, 1910-1920, which strengthened the position of unionism. In 1912 there was a large socialist vote, and the creation of a Secretary of Labor with a labor man, W. B. Wilson, named as director. Large masses of semiskilled and unskilled workers were organized to support the gains in industry caused by the war effort, and the representation of labor in government. The Adamson Eight-Hour Act of 1916 caused membership in unions to rise to a new high in 1920.

From 1920 on there was a continual decline in unionism which was precipitated by racial discrimination, continued government intervention after the war, failure of the steel strike, and a failure to organize the automobile industry.

The National Industrial Recovery Act of 1933 aided the cause of unionism and improved the posture of labor. This event gave the unorganized workers in the mass production industries reassurance that labor was a friend of the government. It provided a feeling of satisfaction that workers' demands for higher wages, lower hours, and better working conditions would be recognized.

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[1] Ibid., p. 59.

An important issue that resulted in a struggle within the American Federation of Labor was the craft versus industrial organization. In 1933 a group of rubber workers decided to organize and applied for a National Charter. When the AFL representative arrived from Washington, D. C., a reorganization by crafts was instituted, much to the dislike of the new members. Finally, a movement precipitated by John L. Lewis of the United Mine Workers, who represented thirty-one percent of the membership of the AFL, insisted that the industrial union principle be applied to organizing workers in mass-production industries. His argument was based on the fact that mechanization had reduced most skills to uniform levels and during a work period many different tasks were performed by a single worker. At the San Francisco Convention in 1934, John L. Lewis and David Dubinsky, leader of the International Ladies' Garment Workers, were elected to the Executive Council of the American Federation of Labor. These two leaders of the largest industrial unions began to change the organization of the AFL in spite of the ingrained dislike of the craft leaders. At the Atlantic City Convention in 1935 the Lewis proposal was put to a vote and defeated. The following day nine labor leaders, under the leadership of John L. Lewis, organized the Committee for Industrial Organizations. This committee existed temporarily under the watchful eye of the Federation until the claims of dual unionism grew so loud further steps had to be taken.

The Executive Council, without John L. Lewis who had resigned when the Committee was formed, ordered the CIO to disband and align itself with the aims of the Federation. The struggle went on for several years. The CIO continued to grow and gained strength with its industrial organization. By June 1937 the separation of the American Federation of Labor and the Committee for Industrial Organization was complete.

After their historic civil war and eventual split, the two unions continued to grow and to gain new members.

The next revolutionary step in the trade union movement came in the latter part of 1955 when the AFL and the CIO were once again united. The men who were largely responsible for this unification were George Meany and Walter P. Reuther. Because of the size of the organization, a complete amalgamation was impossible, and unity was achieved at the top levels only, at that time, with the remainder to be united in time. Complete unification was accomplished by 1961.

Corruption in the labor movement was a factor that aided in bringing the two organizations together. When the merger was completed, a committee on ethical practices was formed to help solve the problem of corruption. Shortly after the merger, charges against affiliated unions were presented. The government conducted hearings, which resulted in the expulsion of the International Brotherhood of Teamsters and two smaller unions in 1957.[1] By this action the AFL-CIO removed all doubt that it was making an attempt to eliminate corruption in the labor field.

At the present time there are approximately 13.5 million card carrying members of the AFL-CIO who participate in more than 60,000 local unions.[2] In addition to the members of the AFL-CIO there are 2.8 million workers who are members of independent or unaffiliated unions. Union membership accounts for 22.2 percent of the total labor force.[3]

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[1]"The Hands That Build America," New York Times, November 17, 1963, sec. 11, p. 2.

[2]AFL-CIO, "This is the AFL-CIO," Washington, D. C., International Relations Department, February 1964, Pub. No. 20.

[3]U. S. Department of Commerce, Statistical Abstract of the United States, 86th ed. (Washington: U. S. Government Printing Office, 1965), p. 247.

Why Workers Join Unions

For over a hundred years men have debated whether it was right, convenient, wise, or necessary for the working class to organize and bargain collectively for better working standards and to eliminate unfair labor practices. The question of whether to permit the organization of labor and collective bargaining is no longer an issue. Now the problem is to what extent organization and collective bargaining can be permitted.

In American society, unions are recognized as a powerful and challenging social, economic institution because of their influence on the economy, their solidarity of membership, and their control of the exploitation of the labor force by management.

Organized labor began its expansion in the eighteenth century and its growth has continued, even though there are those who believe it should be restricted or eliminated. The reasons for this growth no doubt are based on the following issues: higher wages, shorter hours, and longer vacations. These issues can be grouped as the purely economic motives that stimulate membership; in many cases these economic factors provide a complete and parochial analysis.

Behavioristically speaking, unions fulfill a social ambition of the workers. Participation as a member of the union provides an opportunity to become a leader in the business community, to associate with top management in discussing production and labor difficulties, and to attend meetings and conventions which in totality add to his personal prestige among his fellow workers and in his community.

Psychologically, a union fulfills the personality requirements of the individual through self-expression, freedom of action, and ingenuity.

In the early days the worker had very limited alternatives in labor problems or grievances; specifically, he could continue to work or go elsewhere to seek employment.

Industrial relations through unions in the present era have progressed to such a level that a worker today has a feeling of security and is able to speak freely and make requests that were unheard of in the past. In a broader spectrum, union membership is an extension of the democratic process that people in the United States cherish. The union is a device which provides a worker freedom of expression and a feeling of accomplishment when a grievance is resolved by a change in method or when a condition that had been a source of irritation is eliminated. To say that one motive is more or less important than another is purely academic.

For the union member there are more benefits to be gained than the standard triad of organizing, collective bargaining and political action. The unions participate in many extracurricular activities which increase benefits to members. Some of these activities are educational classes, social centers for retirees, investment in low or middle income housing, retirement counseling, health centers, and scholarships.[1]

Types and Functions of a Union

Samuel Gompers, a leading labor leader in the early part of the century, said:

> . . . . The primary essential in our mission has been the protection of the wage-worker, now; to increase his wages; to cut hours off the long workday, which was killing him; to

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[1]"How Unions Spend Their Off-hours," Business Week, September 18, 1965.

> improve the safety and the sanitary conditions of the work shop; to free him from the tyrannies, petty or otherwise, which served to make his existence a slavery. These, in the nature of things, I repeat, were and are the primary objects of trade unionism.[1]

Unions may be of several types. According to Dale Yoder, unions are classified as revolutionary, reformist, or business unions.

A revolutionary union has as a primary objective the destruction or overthrow of the present political and social controls and the substitution therefor of a radically different social and political order. The reformist type unions attempt to change present policy within the framework of the existing society. When their proposals extend beyond the area of working conditions they are practicing uplift unionism. Many early unions attempted to make reforms in such areas as the abolition of imprisonment for debt, establishment of free schools, institution of systems of taxation, and elimination of property requirements for voting.

Business unionism is the most common type of American unionism. The objectives of business unions are sought through collective action. The business union strives to improve the working and living conditions of employees through the principal official called the business agent.[2]

According to the president of the AFL-CIO, a good union must possess four qualities: First, a good union must be able to protect its members and win a reasonable measure of economic justice for them; second, a good union

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[1] Samuel Gompers, Labor and the Common Welfare (New York: Dutton & Co., Inc., 1919), p. 20.

[2] Dale Yoder, Personnel Management and Industrial Relations (5th ed.; Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1964), pp. 164-65.

must be run by the members and for the members; third, a good union must be an honest union; and fourth, a union must look beyond its own horizons.[1]

The power of a particular union depends on its position in the local hierarchy. Unions reflect the environment in which they exist.

Many factors affect the operation of a union such as whether the industry is expanding or declining, the employers are antagonistic or co-operative, men or women form the majority, skilled, semiskilled or unskilled workers are members, and whether the workers are temporarily or permanently employed.

Membership in unions expands during prosperous times in the business cycle and under a liberal Federal Government. Depressions and conservative federal administrations tend to restrict membership.

Unions have attempted to broaden and improve the provisions of the Fair Labor Standards Act which sets minimum wages and maximum hours for workers. The present minimum wage of $1.25 per hour is not paid uniformly throughout the country, and presently there is pressure to increase it. In addition to improving wages and working conditions, unions attempt to bargain with employers, eliminate discrimination, protect the labor movement against corruption, act as lobbies in Congress supporting legislation that will aid workers, and encourage workers to vote. Other benefits that unions have supported for their workers are unemployment insurance, workmen's compensation, universal free public education and medical care for the aged in addition to social security.

The union acts as the employees' mouthpiece in any grievances the workers have with the employer. They take testimony from the worker and

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[1]"What's a Good Union?" New York Times, November 17, 1963, sec. 11, p. 31.

act as his official representative. In securing labor contracts, the union leaders, elected by the employees, arbitrate and negotiate the contract while the work is continuing.

In the event a contract settlement cannot be reached, the union leaders, after a vote of the membership, announce a strike deadline. If the workers go out on strike, the union usually provides assistance through a strike fund to enable members to take care of pressing needs while they are on strike. It is obvious that a strike is not the most beneficial tool in labor-management relations due to the fact that during a strike the employee, employer, and the economy of an area suffer simultaneously.

CHAPTER II

THE UNION SECURITY ISSUE

The development of unions in the United States was retarded by a variety of factors which emphasized individual rather than collective activity as the best method of achieving economic progress. In the nineteenth century, the abundance of free land, large numbers of ambitious immigrants, development of continent-wide markets, and fierce individualism of employers led unions to believe that they would be unable to depend on class solidarity to maintain union membership, dues, and strength. To combat these deterrents the unions turned to contractual provisions requiring the employer to maintain membership.

Union security refers to the right of the union to represent its members and in many cases nonmembers in negotiating agreements with the employer and enforcing the provisions of such agreements.[1] Union security contracts are formal statements which define the status of the union with reference to the work force.

With the passage of the National Labor Relations [Wagner] Act in 1935, the need for union security was theoretically eliminated. This act outlawed employer discrimination against workers because of membership or participation in unions and required employers to bargain with certified unions. The intensity of union security demands continued because union

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[1] Yoder, p. 189.

leaders believed that employers were opposed to unions, and rival unionism increased. These two issues provided union leaders with additional justification for the necessity of union security provisions.

Union security can take many forms with respect to the employer-employee relationship. The closed shop is an agreement whereby the employer agrees that all workers must belong to the union to retain their jobs. He further agrees that when hiring new workers he will hire only members of the union or those who agree to become members. In a union shop the employer agrees that all the workers must belong to the union to keep their jobs. The employer may hire anyone, but the workers he hires must join the union within a specified time, usually thirty days, or lose their jobs. This is the most common form of union security in existence today.

The agency shop is a form of security in which the employer and the union agree that a worker shall not be forced to join or remain a member of the union to keep his job. The worker has the choice of joining or not joining the union; however, if he elects not to join he, nevertheless, must pay to the union a sum equal to the union dues. This sum represents a fee charged to the worker by the union for acting as his agent in collective bargaining and in policing the union contract.

Maintenance of membership is an agreement which states that all present and future members of the union must remain in the union for the duration of the contract to keep their jobs. A worker is free to join if he wants to and those who are members are given a fifteen-day period at the expiration of the contract to resign their membership and retain employment.

The preferential shop is an agreement with the employer that stipulates that union members will be given preference in hiring and layoffs.

In some cases, nonunion members were hired until the employer was able to find union members to replace them.

In the United States the struggle between labor and management began in 1792 when the shoemakers in Philadelphia organized a local union to bargain collectively.[1] Some 174 years have passed and the issue still is being debated: Is union security necessary and what type of union security will please the rank and file, the employees, and the courts? Historically, unions have favored the closed shop, whereas management policy has favored the open shop where the employer refuses to recognize any union as the bargaining agent for the employees but deals with the workers on an individual basis.

In the days before the Norris-Laguardia Act of 1931, the yellow-dog contract was the Guardian of the open shop policy which required employees to agree not to participate in any union or take part in any strike organized against the employer. While the Wagner Act furthered union security, it also limited it to some extent. The Wagner Act aided the cause of union security by encouraging unionization and, therefore, opened up the opportunity for the attainment of closed and union shops. In section 8 (3) of the Wagner Act there are two restrictions which limit union security. This section permitted closed or union shops except in those cases where the union had been dominated or assisted by the employer, or the union did not represent a majority in the bargaining unit.

The open and closed shops have been inadequate in settling labor difficulties or satisfying the needs of employers and employees. The national labor policy was not subject to any drastic change during the

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[1]"What the Unions Really Want," New York Times, November 17, 1963, sec. 11, p. 3.

twelve-year period between 1935-1947. The turmoil created in 1947 by passage of the Labor Management Relations [Taft-Hartley] Act continues unresolved. Although there is no indication that the ultimate goal of a closed shop has changed, union leaders are concentrating today on establishment of the union shop.[1]

The major complaint stemming from union security is that a worker is coerced into joining a union. Discussing this issue and defending the union's position, Harold J. Ruttenburg and Clinton S. Golden state:

> Of cource it's coercion. That's what all the argument is about: the right to force someone to do something against his will. But this is not a legitimate objection to the union shop, as coercion is the fundamental basis of organized society. In fact, civilization can be said to have attained maturity when men become intelligent enough to order their affairs and compel the recalcitrant man, the ignorant man, to submit to certain compulsory rules for the common good of all men. I cannot drive through a red light, although I have enough good sense not to drive carelessly through an intersection; but, because other men lack such sense, for the common good, I am coerced into stopping for a red light, although no cars may be coming from the opposite direction.[2]

In the following chapter the Taft-Hartley Act will be discussed with respect to union membership.

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[1]Chamber of Commerce of the United States, "The Issue: Choice or Compulsion?" Washington, D. C., 1965, p. 3.

[2]Bakke and Kerr, p. 132.

CHAPTER III

THE TAFT-HARTLEY ACT REQUIREMENTS WITH RESPECT TO UNION MEMBERSHIP

Application to Union Agreements

Labor legislation was strengthened in 1935 with passage of the National Labor Relations Act, commonly referred to as the Wagner Act. The purpose of this act was to eliminate the abuses of the labor force by employers, force employers to bargain collectively with employees, and generally accept unionism as public policy. Among the provisions of this act, the closed shop was permitted when negotiated properly. This influenced a shift in the balance of power from employer to employee and as a result union power was strengthened.

Persistent industrial unrest for twelve years following the passage of the Wagner Act brought about congressional inquiry into the factors contributing to unsatisfactory labor relations.

In 1947, as a result of its investigations, Congress amended the Wagner Act by passing the Taft-Hartley Act. Originally, the Wagner Act outlined a series of unfair labor practices on the part of employers which often led to the denial of employee rights and resulted in labor disputes. The Taft-Hartley Act, in an effort to neutralize the power struggle between unions and management, adopted the view that such unrest was in part caused by certain undesirable practices by labor unions. Nevertheless, it clearly reaffirms the idea that it is in the national interest to promote collective

bargaining, so that industrial peace can be secured without forced settlement of labor disputes through governmental intervention.

The fundamental objective of this legislation was to guarantee the individual worker the right to select the representation he desired, free from the coercive pressure of either the union or the employer. As a part of the process, the act outlawed the closed shop and made it illegal for employers to hire union members exclusively or to discriminate against non-union members in the hiring of new workers.

Under section 8 (a), the Taft-Hartley Act permitted employees to negotiate the union shop, a less restrictive form of union security:

> . . . an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment of the effective date of such agreement, whichever is the later . . . .[1]

In addition, the Taft-Hartley Act provided protection for the employer regarding his freedom of speech concerning the union issue. The employer could state his position freely if it did not contain a promise of benefit or threat of reprisal to the workers for their participation or non-participation in union activities. It should be noted that neither the Taft-Hartley Act nor any other federal labor act requires an employer to grant a union security clause in an agreement. There are many agreements in existence that contain no security clauses. In 1958-59, nineteen percent of all workers considered in the Bureau of Labor Statistics study (Table 1)

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[1]James B. Wason, Section 14 (b) of the Taft-Hartley Act and State Right to Work Laws (Washington, D.C.: Library of Congress, March 19, 1965), p. 8.

TABLE 1

VARIATIONS IN TYPES OF UNION SECURITY PROVISIONS IN MAJOR COLLECTIVE BARGAINING AGREEMENTS BY TYPE OF HIRING CLAUSES, 1958-59

Union security provision	Total		Hiring Provision					
			Preferential hiring[1]		Consideration to union in hiring[2]		No hiring provision	
	Agreements	Workers (thousands)	Agreements	Workers (thousands)	Agreements	Workers (thousands)	Agreements	Workers (thousands)
All agreements studied	1,631	7,472.0	125	391.9	232	1,466.8	1,274	5,613.3
Union shop	1,162	5,532.6	112	326.6	191	1,261.4	859	3,944.7
Employees must be union members before date of employment[3]	45	121.9	45	121.9				
Union shop--all employees required to join within a specified time	893	4,244.9	63	198.6	177	1,158.5	653	2,887.8
Modified union shop--certain groups exempted from membership requirements[4]	221	1,160.9	4	6.1	14	102.9	203	1,051.9
Modified union shop plus agency shop for the exempted groups	3	5.0					3	5.0
Maintenance of membership[4]	125	546.8	5	15.0	3	6.2	117	525.6
Maintenance of membership only	117	499.8	5	15.0	3	6.2	109	478.6
Maintenance of membership and agency shop[4]	8	47.0					8	47.0
Sole bargaining	344	1,392.6	8	50.3	38	199.3	298	1,143.0
Sole bargaining plus preferential hiring[1]	8	50.3	8	50.3				
Sole bargaining plus agency shop	4	19.7			1	15.0	3	4.7
Sole bargaining only	321	1,299.2			33	177.2	288	1,122.0
Sole bargaining plus harmony clause	11	23.4			4	7.1	7	16.3

[1] No explicit statement as to nondiscrimination between members and nonmembers of the union.

[2] Agreements provided for hiring on a nondiscriminatory basis.

[3] This is the closed shop which was outlawed in establishments covered by Labor Management Relations Act. Although these figures are indicative of prevalence of closed shop in major agreements, they are not necessarily representative of all agreements because of underrepresentation in this study of agreements covering small establishments.

[4] Includes agreements with escape clause, which permits members to withdraw from the union at specified periods (usually after 1 year) during term of agreement. NOTE: Because of rounding, sums of individual items may not equal totals.

Source: U. S. Bureau of Labor Statistics, Monthly Labor Review, v. 82, December, 1959, p. 1351.

had no union security clauses in their contracts. Where such clauses do exist, however, the union shop is the most common form of union security at the present time.

Union shop and maintenance-of-membership provisions were permitted by the Taft-Hartley Act after a special vote of the membership. When the act was passed, it was believed that employees, given complete freedom to decide, would reject compulsory unionism. The validity of this belief was tested by numerous National Labor Relations Board secret ballot elections conducted among organized firms. These elections began in 1947 and continued until 1951. There were 6,542,564 workers eligible to vote; 5,547,478 valid ballots were cast, and an overwhelming majority of 91% were cast in favor of union security.[1]

Such elections were discontinued in 1951 by the Taft-Humphrey amendments and Senator Robert A. Taft, one of the sponsors of the Taft-Hartley Act, concluded that "the special union security elections were a waste of government money, expended only to prove the obvious."[2]

The Taft-Humphrey amendments, which permitted negotiations for union shop and maintenance-of-membership without prior voting, also retained the little-known and seldom-used shop de-authorization poll. This de-authorization vote is taken by the National Labor Relations Board when thirty percent of the employees in a bargaining unit petition to rescind the union's authority to make union security agreements. If a majority of these employees vote to rescind the authority in a de-authorization election, it becomes illegal for the parties to negotiate a union security contract

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[1]AFL-CIO, The Truth About Right-to-Work Laws (Washington: February, 1965), Pub. No. 46, p. 6.

[2]Ibid., p. 7.

for one year. These elections are uncommon. The ability of employees to rescind the union shop requirement is a powerful escape provision, the presence of which tends to keep union representatives alert to the needs of the membership.

The Taft-Hartley Act provided that an employer could call for an election to determine the bargaining agent. Once the agent was determined, a new election could not be held for twelve months. In addition, the unions were liable if the contract was broken or they elected to participate in a jurisdictional dispute or unlawful boycott.

The act further provided that sixty days prior to the termination of a bargaining agreement both labor and management must notify each other of impending plans to terminate or modify the agreement. If agreement cannot be reached, the state and federal conciliation agencies must be notified and any employees who strike the plant within the sixty-day cooling off period lose their status as employees under the act and will not be reinstated by the National Labor Relations Board. This provision minimizes the danger of work stoppage before the interested parties have had an opportunity to participate in the bargaining process. Where the national health and safety are concerned, this sixty-day period provides the President with enough time to examine the facts preventing agreement and to determine whether to seek an injunction to prevent a strike or lock out.

The Taft-Hartley Act expanded the National Labor Relations Board from three to five members. The board, which investigates unfair labor practices, was expanded to include an office of General Counsel whose primary duty was to determine those cases which should be prosecuted. The National Labor Relations Board was directed to confine its jurisdiction to industries

covered ty the act (interstate), and in carrying out its duties it was ordered not to concern itself with unfair labor practices that were older than six months.

Regarding the Taft-Hartley Act, Phillip Murray, the leader of the CIO, claimed that:

> . . . the Taft-Hartley bill was conceived in sin, that it was a sinful piece of legislation, and that its promoters were diabolical men who, seething with hatred, designed or contrived this ugly measure for the purpose of imposing their wrath upon the millions of organized and unorganized workers throughout the United States of America.[1]

The Taft-Hartley Act received vigorous opposition from labor leaders throughout the nation. However, it was accepted by both management and rank and file union members because it provided individual workers the freedom of selection regarding union membership.

Restrictions on Union Security Agreements

In the construction, maritime, and casual trade unions, after the closed shop was declared illegal, unions were ineffective in their control of working conditions without having control of hiring. Employees in these industries normally work for several employers, and leave a job when it is completed. To alleviate this problem, Congress enacted the Landrum-Griffin Act in 1959, relaxed the restrictions of the Taft-Hartley Act that applied to the construction industry. The Landrum-Griffin Act legalized prehire agreements in the construction industry. Pre-hire agreements allow employers to employ union members, where available, prior to the commencement

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[1]Paul Sultan, Labor Economics (New York: Henry Holt and Company, 1957), p. 442.

of work. Such agreements make union membership compulsory after seven days of employment, rather than thirty days as provided by the Taft-Hartley Act, provided that state law permits union security agreements. Union security agreements in the construction industry can also require an employer to notify the union of vacancies to enable the union to refer qualified applicants for employment.

The Taft-Hartley Act caused considerable controversy in the maritime industry regarding the legality of the hiring hall. The hiring hall is an employment office, usually financed by employers and a union, and frequently controlled by the union, where maritime employees report when they are out of work and desire employment. The idea behind the hiring hall is to give first choice of work to regular employees, who are usually union members, and the remainder of the jobs are distributed to anyone interested in working. The purpose of the hiring hall is to organize the labor force, and provide employers with a supply of workers when needed.

The National Labor Relations Board, the courts, and the parties were faced with the question: Does the closed shop policy of the Taft-Hartley Act apply to hiring halls? The NLRB ruled that if hiring halls were not discriminating in their referral of employees and the employers were able to reject employees recommended by the hiring halls, they were not violating the closed shop provision of the act.[1] For a hiring hall to be found discriminatory, a complaint by an individual, a union, or a company, followed by proof that the discrimination did take place, is necessary. As long as obvious discrimination does not take place, the hiring hall and

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[1]Commerce Clearing House, Inc., Guidebook to Labor Relations (Chicago, Ill.: Commerce Clearing House, Inc., February, 1964), p. 168.

closed shop practices are difficult to attack under the provisions of the Taft-Hartley Act.

The Taft-Hartley Act requires financial support of the union as the only condition of membership. The union shop requirement that a worker must join a union and remain a member for the duration of the agreement is basically a requirement that the employee join the union and pay his dues and initiation fee. Nothing more is required and the National Labor Relations Board, the agency which interprets and administers the law, has ruled that employees cannot be discharged for lack of participation in union activities, failure to pay strike fund assessments, failure to pay a union-imposed fine, or refusal to participate in an initiation ceremony.

The Free Rider Problem

Beginning in 1935, employers were compelled to recognize unionism and to bargain collectively. However, from 1935 until the Taft-Hartley Act became law in 1947, unions were able to negotiate closed shop contracts; therefore membership in unions became compulsory in those industries where closed shop contracts were negotiated.

When the Taft-Hartley Act restated the federal policy toward labor and contracts with employers, closed shops were banned, workers were given the freedom of choice regarding union membership, and unions were required to bargain for all employees in the bargaining unit, when a contract was negotiated. A result of this policy was granting recognition to a single union in those units where, by referendum, employees negotiated a contract to specify the bargaining representative for the purpose of collective bargaining. Unions were organized on an industrial, trade, or craft basis

in each shop to avoid dual unionism and to establish exclusive jurisdiction. If the union negotiated with management an increase of twenty-cents per hour for workers in a shop, the members of the union and the non-members as well would benefit from the collective bargaining. The non-members could not be paid less than the union members or be excluded from the wage increase.

Section 9 (a) of the Taft-Hartley Act states:

> . . . collective bargaining representatives selected by the majority in the unit shall be the exclusive representatives of all the employees in the unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment . . . .[1]

This requirement for unit-wide bargaining is the basis for establishing a national policy which permits negotiation of collective bargaining agreements requiring union membership and the payment of union dues and initiation fees. The unions call this provision of the Taft-Hartley Act the free rider clause. The unions feel that workers in the bargaining unit who receive the benefits of higher wages, shorter hours, better working conditions and fringe benefits and who refuse to contribute to the union dues and initiation fees are free riders.

The exclusive bargaining rights granted to the union deny the individual non-member, who is usually in the minority group, the right to bargain with the employer on an individual basis independent of the union. Father Edward A. Keller, C.S.C., has stated:

> . . . the most important answer to the "free rider" argument is that the unions themselves (in the Wagner and Taft-

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[1] Ibid., p. 57.

> Hartley Acts) sought authority to represent not only their own members but also all other employees in the bargaining units (exclusive representation).[1]

The unions' argument is that the non-member who is being represented should be required to pay for this service in proportion to the benefits he receives from the union activities. In the majority of unions the membership is usually large enough to defray the organization cost and expenses of union activities, without forcing those who elect not to become members to pay dues and initiation fees.

It is the writer's opinion that an examination of a particular union organization might reveal that it shelters its own free riders. The organized free rider depends on his union leader to protect him and his inefficiency. This worker is willing to contribute as little as possible, watch the clock, and have the shop steward protect him when he is cited for violation of rules in the shop. These members are delighted to pay their dues and depend on the union leaders to advance their cause, when a responsible non-member is relying on competency, efficiency, and devotion as a basis for reward.

The union shop was not a mandatory requirement of the Taft-Hartley Act. There are many workers in the nation who, because of religious convictions or a belief in personal freedom, refrain from becoming union members. To remedy this situation, the agency shop was created. Under this form of security a worker is required to pay a sum equal to the initiation fee and monthly dues. He may elect to join or not to join the union. If he is a union member he is free to drop his union membership and to keep his

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[1]Chamber of Commerce of the United States, "The Right of the Right to Work," Washington, D. C., 1965, p. 19.

job if he agrees to continue paying the dues. The sum paid by the non-member is considered a fee paid for having the union act as his agent in collective bargaining activities.

Although proponents argue that union dues must be paid by non-members, there are substantial reasons why some workers feel this support should not be paid. Among these objections to union leadership and policies are lack of confidence in management. Of fifty-six million workers in nonagricultural establishments, thirty-nine million have not joined unions.[1]

Most union contracts have seniority provisions which require that newest workers be laid off first and the oldest members be rehired first. This procedure may interfere with the union membership campaign. The young workers do not benefit from representation in this situation.

If the motives of the union are based on sound principles and the benefit of the membership served properly, unions should have little difficulty in maintaining strong and universal membership. Whether the financial support the unions are exacting from non-members is being used for the purpose of paying financial costs related to collective bargaining has been questioned.

Union Dues and Initiation Fees

The negotiation of a union shop is permitted under the provisions of the Taft-Hartley Act. When the union shop is negotiated a financial burden is imposed on the members. The extent of this burden will be examined here.

Usually a union is organized locally, with a national affiliation and possible international relationships. It can be assumed that as the

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[1] U. S. Congress, Repeal of Section 14(b) of the National Labor Relations Act, as Amended, 89th Cong., 1st Sess., September 9, 1965.

affiliation increases, the financial burden of the union grows proportionately. In modern society the maintenance of a union organization is an expensive operation. Some of the general expenses are officer and employee salaries, office rent, travelling expenses, communication costs, legal fees, research costs, and routine administration charges. In an earlier discussion the strike fund was mentioned; it is the responsibility of the members to build a reserve of funds for payment in the event of a long strike.

The funds used to operate unions come from two primary sources: monthly dues and initiation fees. The payment of dues is usually on a monthly basis and is made at the local level. In Table 2 a breakdown of dues from $0.00 to $35.00 is presented. There is a wide range in monthly payments. The local union determines the amount to be paid by the members.

TABLE 2

UNION DUES June 30, 1960

Amount Per Month	Locals with Prevailing Fee			Locals with a Maximum Fee		
	Number	Percent	Cumulative Percent	Number	Percent	Cumulative Percent
Total	39,650	100.0		8,997	100.0	
No dues	847	2.1	2.1	-	-	-
Less than $1.00	891	2.2	4.3	1,266	14.1	14.1
$1.00 to $ 1.99	1,940	4.9	9.2	2,019	22.4	36.5
$2.00 to $ 2.99	4,277	10.8	20.0	1,713	19.0	55.5
$3.00 to $ 3.99	11,004	27.8	47.8	1,941	21.6	77.1
$4.00 to $ 4.99	9,157	23.1	70.9	972	10.8	87.9
$5.00 to $ 5.99	5,705	14.4	85.3	335	3.7	91.6
$6.00 to $ 9.99	2,547	6.4	91.7	483	5.4	97.0
$10.00 to $24.99	444	1.1	92.8	63	0.7	97.7
$25.00 to $35.00	5	-	92.8	4	-	97.7
Not determined	2,185	5.5	98.3	201	-	100.0
Not reported	648	1.6	99.9	-	-	-

Source: U. S. Bureau of Labor Statistics, Monthly Labor Review, January, 1961, p. 32.

The national union receives a percentage of this amount, this being its only means of financial support. The national headquarters in all likelihood exercises some influence over the local union in determining the amount to be paid by the members.

Initiation fees are paid to the local union when the member is placed on the roles of the union. The magnitude and range of initiation fees as depicted in Table 3 are much larger than the monthly dues. Two-thirds of the locals reported a prevailing fee of less than $15.00. The most common prevailing fee was $5.00 and the most common maximum fee was $10.00.

Dues and initiation fees tend to be higher in the older unions. One reason why this condition exists is that the older unions are craft organizations composed of skilled workers. These workers combine high earnings potential with scarcity of employment. The unions feel that the present high level of wages should require a large entrance fee for a new worker. High entrance fees discourage new workers, so that more work is available for those who are already members. The benefits in the older organizations are sometimes greater than in newer unions. These benefits come from member sponsorship and require higher contributions for continuation.[1]

The Taft-Hartley Act required unions to completely disclose their financial transactions and salaries paid to officials above $5,000. It was felt that filing of these reports would promote judicious financial operations and disclose some of the abuses of union resources. An additional restriction was the declaration that unions could not make direct contributions to the election of any candidate for a federal political office. In

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[1]Gordon Bloom and Herbert R. Northrup, Economics of Labor Relations (5th ed.: Homewood, Ill.: Richard D. Irwin, Inc., 1965), p. 120.

[illegible]

TABLE 3

UNION INITIATION DUES JUNE 30, 1960

Amount of Initiation Fee	Locals with a Prevailing Fee			Locals with a Maximum Fee		
	Number	Percent	Cumulative Percent	Number	Percent	Cumulative Percent
Total	38,823	100.0		9,824		
No initiation fee	1,905	4.9	4.9	--	--	--
Less than $1.00	179	0.5	5.4	14	0.1	0.1
$1.00	1,291	3.3	8.7	152	1.5	1.6
$1.00 to $1.99	68	0.2	8.9	101	1.0	2.6
$2.00	1,956	5.0	13.9	285	2.9	5.5
$2.01 to $2.99	185	0.5	14.4	66	0.7	6.2
$3.00 to $3.99	1,365	3.5	17.9	435	4.4	10.6
$4.00 to $4.99	388	1.0	18.9	84	0.9	11.5
$5.00	9,625	24.8	43.7	1,464	14.9	26.4
$5.01 to $9.99	1,858	4.8	48.5	408	4.2	30.6
$10.00	5,372	13.8	62.3	1,974	20.1	50.7
$10.01 to $14.99	381	1.0	63.3	716	7.3	58.0
$15.00	1,861	4.8	68.1	870	8.9	66.9
$15.01 to $24.99	939	2.4	70.5	651	6.7	73.6
$25.00	2,047	5.3	75.8	802	8.2	81.8
$25.01 to $49.99	808	2.1	77.9	495	5.0	86.8
$50.00	2,648	6.8	84.7	451	4.6	91.4
$50.01 to $99.99	1,319	3.4	88.1	298	3.0	94.4
$100.00	1,340	3.5	91.6	158	1.6	96.0
$100.01 to $149.99	593	1.5	93.1	75	0.8	96.8
$150.00	610	1.6	94.7	37	0.4	97.2
$150.01 to $199.99	164	0.4	95.1	14	0.1	97.3
$200.00	472	1.2	96.3	9	0.1	97.4
$200.01 to $249.99	86	0.2	96.5	7	0.1	97.5
$250.00	177	0.5	97.0	14	0.1	97.6
$250.01 to $500.00	325	0.8	97.8	58	0.6	98.2
$500.01 to $1,400.00	17	--	--	11	0.1	98.3
Not determined	442	1.1	98.9	169	1.7	100.0
Not reported	402	1.0	99.9	--	--	--

Source: U. S. Bureau of Labor Statistics, Monthly Labor Review, January, 1961, p. 33.

a case in Georgia involving the use of union funds under a union shop agreement, the defendants' unions were found guilty of expending union funds for political purposes which had no necessary or reasonable relationship to collective bargaining.[1] The unions admitted substantially all of the facts alleged in the complaint. The Georgia Supreme Court upheld the lower court.[2]

The Taft-Hartley Act in section 8 (a) (3) states that "the employee . . . tender the periodic dues and initiation fee" as a legal test of membership. Also included in the act is section 8 (b) (5) which protects the employees against being required to pay excessive or discriminatory fees by unions having union shop agreements.[3] Generally the complaints that are brought forth arise from excessive initiation fees rather than dues. The criterion used to determine whether initiation fees are excessive is an examination of the fee paid relative to the benefits expected. It is considered to be an unfair labor practice to charge discriminatory or excessive initiation fees under compulsory-union contracts. It is also unlawful to charge parttime or temporary employees, who are not union members, an initiation fee.

Whether or not an initiation fee is excessive depends upon the wage level of the employees and consideration of the custom of the industry. While a compulsory-union contract is in effect, a union is not required to maintain its initiation fee at a constant level.[4] During an organization

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[1] Nancy M. Looper, et al. v. Georgia Southern & F. R. Co., Bibb Superior Court, No. 16,537.

[2] Looper v. Georgia Southern & F. R. Co., 213 Ga. 279; 99 S.E. 2nd 101.

[3] Commerce Clearing House, Inc., pp. 227-28.

[4] Ibid., p. 228.

campaign a union may announce a proposed increase in initiation fees to attract members before effecting the increase, or it may decrease initiation fees to induce members to join the union.

The Labor Management Reporting and Disclosure Act of 1959, normally referred to as the Landrum-Griffin Act, extends the Taft-Hartley Act in the financial reporting aspect. Under the provisions of this act the unions are prohibited from raising dues and initiation fees or from assessing members without due notice of a scheduled referendum.

The collection of dues is also restricted by section 302 of the Taft-Hartley Act. The dues of members are usually deducted from a member's check by the employer and this procedure is commonly referred to as the check-off. Under section 302 a check-off cannot be made unless the worker has given authorization in writing, and the assignment cannot be made irrevocable for more than one year or beyond the termination date of the applicable collective agreement, whichever is the shorter period.[1]

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[1] Ibid., p. 66.

CHAPTER IV

THE PURPOSE AND ADMINISTRATION OF RIGHT-TO-WORK LAWS

Scope and Enforcement

Right-to-work or right-to-wreck, compulsion or freedom, are two phrases that have gained national prominence since the Taft-Hartley Act was enacted. In the previous chapters the facets of labor-management relations pertaining to union security on a national basis have been examined. In this chapter attention will be focused on a particular section of the act that has been a source of irritation to labor organizations for many years.

Section 14(b) of the Taft-Hartley Act states:

> . . . nothing in this act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.[1]

The effect of section 14(b) is not to allow states to authorize legislatively stronger forms of union security, such as the closed shop, than are permitted under section 8(a) of the federal law, but rather to allow states to prohibit forms of union security permitted under the act.

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[1]Gerard D. Reilly, States Rights and the Law of Labor Relations (Washington, D.C.: American Enterprise Association, Inc., 1955), p. 16.

In 1947, when the legislation for the Taft-Hartley Act was being formulated, the Senate version of the bill did not include section 14(b). The Hartley House Bill contained this provision. Senator Taft accepted this, and it has been argued that it was his feeling that it would not apply to industries engaged in interstate commerce and thus preempt the federal law.

Senator Taft said:

> We considered the arguments very carefully in the committee and I myself came to the conclusion that since there had been for such a long time so many union shops in the United States, since in many trades it was entirely customary and worked satisfactorily, I at least was unwilling to go to the extent of abolishing the possibility of a union shop contract . . . . So I think it would be a mistake to go to the extreme of absolutely outlawing a contract which provides for a union shop, requiring all employees to join the union, if that arrangement meets with the approval of the employer and meets with the approval of a majority of the employees, and is embodied in a written contract.[1]

Many Members of Congress were opposed to the idea of giving state governments the right to determine whether a federal law shall be in effect in their states. Section 14(b) of the Taft-Hartley Act allows the states to legislate a more restrictive labor policy than that provided under federal law. The extent to which a labor organization endowed with authority by Congress or state legislatures should be permitted to exert coercive power to require contributions to its maintenance and well-being, and the extent to which such an organization should be permitted to determine whether workers, otherwise employable, should be denied work or be forced out of work, provide the basis for this determination.

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[1] Leroy S. Merrifield, "The Union Shop and the National Labor Policy," The George Washington University Magazine, Vol. 2, No. 3 (Fall 1965), p. 23.

The following nineteen states have right-to-work legislation in effect: Alabama, Arizona, Arkansas, Florida, Georgia, Iowa, Kansas, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. The state of Louisiana has a law that applies specifically to agricultural employees and certain agricultural processing employees. Efforts to pass right-to-work legislation by public referendum have failed in California (twice), Colorado, Idaho, Maine, Massachusetts, New Mexico, Ohio, Oklahoma, and Washington (twice). Laws in general application have been repealed in Delaware, Hawaii, Indiana, Louisiana, Maine, and New Hampshire.[1]

One of the early states to pass right-to-work legislation was Arkansas. The law, passed in 1944, is impartial, protecting the union and nonunion employees:

> No person shall be denied employment because of membership or affiliation with or resignation from a labor union, or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union; nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employment.[2]

All of the states that have right-to-work legislation have outlawed the closed shop and the union shop, as summarized with the other provisions

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[1]James R. Wason, Section 14(b) of the Taft-Hartley Act and State Right-to-Work Laws (Washington, D.C.: Library of Congress, March, 1965), p. 18.

[2]Johnny H. Killian, Section 14(b) of the Taft-Hartley Act (Washington, D.C.: Library of Congress, February, 1965), p. 9.

of the constitutional amendments (Table 4). The agency shop is prohibited specifically in eleven states and in the eight remaining states it has been considered within their jurisdiction and outlawed based on rulings of the attorney general of each state.[1]

It is apparent that the enforcement of right-to-work laws varies from state to state (Table 5). In ten states penalties for violation are enumerated, while in states with a relatively large amount of industry such as Texas, North Carolina, Florida, and Alabama, no penalties are enumerated. In eleven of the nineteen states, civil damage suits may be brought against violators. Eight states provide that conspiracies to violate the law are illegal and in only nine states is injunctive relief against violators provided for in the law.

To establish uniformity in the federal law governing union security agreements, House Rule 77 was presented in June 1965, to amend section 8(a)(3) to provide the positive declaration that no state law could prohibit union security agreements which are permissible under the federal law. It would not change the existing federal restrictions on security arrangements now permitted under the act. In addition to those changes mentioned above, section 705(b) of the Labor Management Reporting and Disclosure Act of 1959 would be repealed to eliminate any possible confusion regarding the intent that the uniform federal law would also be applicable to the construction industry.[2]

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[1] Herbert R. Northrup and Gordon F. Bloom, Government and Labor (Homewood, Illinois: Richard D. Irwin, Inc., 1963), p. 228.

[2] U. S., Congress, Senate, Repeal of Section 14(b) of the National Labor Relations Act, as Amended, 89th Cong., 1st Sess., 1965, p. 4.

TABLE 4

PROVISIONS OF STATE RIGHT-TO-WORK LAWS, AS OF FEBRUARY 1, 1965

State	Year	Outlaws Closed Shop	Outlaws Union Shop	Outlaws Agency Shop	Outlaws "Yellow-Dog" Contract	Restricts Check-off of Union Dues	Prohibits Union Monopoly
Alabama	1953	Yes	Yes	Yes[1]	Yes[2]	No	Yes
Arizona	1946	Yes	Yes	Yes[1]	No	No	No
Arkansas	1944	Yes	Yes	Yes[1]	Yes	Yes	No
Florida	1944	Yes	Yes	Yes[1]	Yes	No	No
Georgia	1947	Yes	Yes	Yes	Yes	Yes	No
Iowa	1947	Yes	Yes	Yes[1]	Yes	Yes	No
Kansas	1958	Yes	Yes	Yes[1]	Yes	No	No
Mississippi	1954	Yes	Yes	Yes[1]	Yes	No	Yes
Nebraska	1946	Yes	Yes	Yes[1]	Yes[2]	No	No
Nevada	1951	Yes	Yes	Yes[1]	No[2]	No	No
North Carolina	1947	Yes	Yes	Yes[1]	Yes	No	No
North Dakota	1946	Yes	Yes	Yes[1]	Yes	No	No
South Carolina	1954	Yes	Yes	Yes[1]	Yes	Yes	Yes
South Dakota	1946	Yes	Yes	Yes[1]	Yes	No	No
Tennessee	1947	Yes	Yes	Yes[1]	Yes	No	No
Texas	1947	Yes	Yes	Yes[1]	Yes	No	Yes
Utah	1955	Yes	Yes	Yes	Yes	No	Yes
Virginia	1947	Yes	Yes	Yes	Yes	No	Yes
Wyoming	1963	Yes	Yes	Yes	Yes	No	No

[1]Not specifically stated in law; ruling of attorney general of state.

[2]No provision in right-to-work law.

Source: Library of Congress, Legislative Reference Service, Section 14(b) of the Taft-Hartley Act, January 13, 1965.

TABLE 5

PROVISIONS OF STATE RIGHT-TO-WORK LAWS - ENFORCEMENT, AS OF FEBRUARY 1, 1965

State	Year	Penalties Enumerated	Violators May Be Sued	Conspiracies to Violate Illegal	Injunctive Relief Provided
Alabama	1953	No	Yes	No	No
Arizona	1946	No	Yes	Yes	Yes
Arkansas	1944	Yes	No	No	No
Florida	1944	No	No	No	No
Georgia	1947	Yes	Yes	No	Yes
Iowa	1947	Yes	No	No	Yes
Kansas	1958	No	No	Yes	No
Mississippi	1954	No	Yes	No	No
Nebraska	1946	Yes	No	No	No
Nevada	1951	No	Yes	Yes	Yes
North Carolina	1947	No	Yes	No	No
North Dakota	1946	No	No	No	No
South Carolina	1954	Yes	Yes	Yes	Yes
South Dakota	1946	Yes	No	Yes	No
Tennessee	1947	Yes	No	No	No
Texas	1947	No	Yes	No	Yes
Utah	1955	Yes	Yes	Yes	Yes
Virginia	1947	Yes	Yes	Yes	Yes
Wyoming	1963	Yes	Yes	Yes	Yes

Source: Library of Congress, Legislative Reference Service, Section 14(b) of the Taft-Hartley Act, January 13, 1965.

The second session of the Eighty-Ninth Congress was unable to limit debate on House Rule 77 and it was set aside indefinitely with the words, "may it rest in peace." Repeal of section 14(b) would prevent state laws from being applied to workers covered by the Taft-Hartley Act. It would not prevent states from restricting union shop arrangements in industries engaged in intrastate commerce. Since the majority of employees and collective bargaining arrangements are within the scope of interstate commerce, restrictive state legislation would thus have only a limited effect and application.

Results of the Fortune Survey

In 1957, Fortune magazine made a survey of the effects of right-to-work laws in eighteen states. The survey did not include Kansas and Wyoming since these states did not pass right-to-work legislation until 1958 and 1963, respectively. Fortune magazine noted that small business groups have done most of the lobbying for right-to-work legislation. Few large corporations have taken a stand on the right-to-work issue.[1]

A summary of the effects of the states' right-to-work laws was presented in the Personnel Journal in 1963 as follows:

> Alabama (1946): The impact of the right-to-work law has been mainly psychological, i.e., since state policy is suggested against strong unions, the law has made it a little harder to organize workers.
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> Arizona (1946): There is no effective enforcement machinery in the state to enforce the right-to-work statute. The closed shop continues to operate in construction craft unions. Contractors generally hire union workers only, since union men refuse to work with nonunion workers.

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[1] Killian, p. 10.

Arkansas (1944): Right-to-work has achieved little; the closed shop did not generally exist even before the right-to-work amendment.

Florida (1944): Again, there has been little or no effect due to lack of enforcement. The problem of enforcement was referred to the Assistant General to study ways to make the law more effective.

Georgia (1947): Right-to-work has made "no appreciable effect" according to the state A.F.L.-C.I.O. director. More people have been unionized here since the law's enactment than ever before.

Indiana (1957): This is probably the only major industrial state which has a right-to-work law. Unions have succeeded in taking the teeth out of the law by resorting to agency shop contracts -- where the nonmember is forced to pay a fee equivalent to union dues. (The agency shop arrangement was recently held legal under federal law by the U. S. Supreme Court.)

Iowa (1947): This is one of the few states where right-to-work legislation has resulted in any appreciable resignation of union members from their unions. However, the move of industry into Iowa has raised union membership to all time highs. Craft unions remain closed shop in practice.

Mississippi (1954): Mississippi's right-to-work law has been used to secure injunctions against some building trades unions that picketed building sites demanding that union labor be employed. Further, it has strengthened anti-union sentiments somewhat and made organizing a little more difficult.

Nebraska (1946): A.F.L.-C.I.O. membership has grown slightly since enactment of this state's law. No appreciable effect has been noticed.

Nevada (1952): A worker in Nevada can seek relief under Nevada's law only by securing an injunction. This has rendered the law largely useless. A high proportion of union members in the building trades still are able to bar nonunion men from work.

North Carolina (1947): Between 1947 and 1957, union membership increased 40% to about 80,000 members. Fortune suggests that the state right-to-work law indirectly may have contributed to this union growth by helping to attract industry into North Carolina.

North Dakota (1948): Former State Senator Milton Rue, a contractor, is quoted by Fortune as follows: "It [right-to-work] is a beneficial law to have, but there is no specific use for it now."

South Carolina (1954): Enforcement in South Carolina has been termed as "sporadic." Most old union shop agreements have been renewed without any particular difficulty.

South Dakota (1946): Building trades unions generally still refuse to work with nomunion men, so contractors avoid hiring nomunion workers. A union official is quoted as saying, "We may have a right-to-work law, but there is no have-to-work law."

Tennessee (1947): Again, right-to-work has had little practical effect. Repeated attempts at repeal have been unsuccessful.

Texas (1947): As of 1957, Texas had 350,000 union members, an increase of 33% prior to passage of the right-to-work law. Union and management sources report the figure would be only slightly higher if there were no such law.

Utah (1955): Union membership has not been changed appreciably; one company reported that only about 2 - 3% of the old union membership left the union after passage of the law.

Virginia (1947): Right-to-work has resulted in some increase in nonunion building contractors and hampered union organizing efforts somewhat.[1]

The Right-to-Work, Pro and Con

Generally the proponents of right-to-work laws are business managers who object to any interference with their ability to hire and fire workers. The opponents of this issue are the union officials who state that their organization brings democracy to the work force; however in performing this function they want the right to coerce workers into forced membership and forced payment of dues. The states that have outlawed or

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[1]"Right-to-Work Legislation," Personnel Journal, Vol. 42, No. 11 (December, 1963), 549-59, 572.

restricted union security have a large rural vote. In the states where unions are the weakest, right-to-work legislation has been easily enacted. In this section will be reviewed the materials that have sustained this controversy for nineteen years.

The principal argument for right-to-work legislation is based upon the assumption that compulsory unionism violates the fundamental rights of an individual guaranteed by the Constitution. In a democratic society, membership or nonmembership in a union should not determine the right of an individual to secure or keep a job. Americans generally believe that freedom of association is a fundamental right of all individuals and that the individual should be free to select the organization he wishes to support and to which he may belong. These rights are protected by the Ninth Amendment to the Constitution which states that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" and these are protected against impairment by governmental action in the First, Fifth, and Fourteenth Amendments to the Constitution of the United States.[1] The nineteen states having so-called right-to-work legislation do not create new rights, nor do they prevent an employer from discharging an employee for cause or lack of work; they seek merely to protect the fundamental right of the individual from invasion through the imposition of compulsory union membership as a condition of securing or retaining employment.

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[1] Library of Congress, National Labor Policy, 89th Cong., 1st Sess., Senate, May 1965, Document 32, p. 199.

The Ninth Amendment is a basic statement of the inherent rights of an individual. With freedom being the basic characteristic of our democratic society, many arguments for right-to-work legislation claim that this should include the right of an individual to seek, secure, and retain employment without the pressure to join or pay tribute to any private organization.

A further argument contends that freedom of association is a composite of rights protected by the First Amendment, with particular emphasis given to the freedom of speech and assembly. This section of the Constitution gives the individual the right to live as he chooses and to select those organizations he may wish to join or refrain from joining. Individuals are free to choose political parties, join religious groups, fraternities, social clubs, and civic organizations; however, to coerce a worker to join a labor organization to retain employment is a violation of his right of freedom of association.

An additional argument proposed to support right-to-work is that compulsory unionism does not exist in most of the free western European nations. Compulsory unionism is prohibited in France, Western Germany, Belgium, Holland, Denmark, Austria, and Switzerland by constitution, statute, or judicial decision.[1] This argument claims that the United States, as the leader of the free world, should not sanction compulsory unionism, nor permit it to exist.

Management groups feel that compulsory unionism forces workers to become union members and pay dues for the privilege of earning a living.

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[1] Ibid., p. 233.

[1] Ibid., p. 240.

They contend that after surrendering this basic freedom, the workers become anonymous units of highly organized unions in which they are forced to accept the opinions of the union leaders with regard to social, political, and economic affairs. Individuals must then accept the decisions of a majority with regard to their personal well-being.

Cases have arisen where workers lost their jobs because the religion to which they belonged prohibited its members from joining societies, unions, or other organizations. These workers had to violate their religious convictions or give up their livelihood.

Thus, the arguments for right-to-work legislation claim to prove that compulsory union membership relates to the deprivation of some of an individual's rights guaranteed under the Constitution.

The arguments against right-to-work legislation come from the labor unions which state that the motives of right-to-work laws are to weaken and cripple labor unions, not to protect the worker's rights. The unions feel that union security clauses and forced membership are consistent with democratic traditions and ethically right. The unions argue that the majority should rule. When workers vote for compulsory union security clauses, the minority should be forced to join the majority to strengthen the union and to increase the power of the majority. Majority rule is recognized as a democratic form of organization; the individual who relinquishes a certain amount of freedom receives greater benefits from group action. Results of the National Labor Relations Board elections cited earlier stand as evidence that the union shop was favored by a strong majority of the workers.

The elected bargaining representative represents all workers in the unit; it is the contention of union leaders that since nonunion members receive benefits to the same extent as the union members they, too, should contribute financial support to the union. The unions argue that since membership in some private organizations, such as the bar associations, is compulsory, why should workers be given the opportunity to refuse union membership?

The organization of all workers into unions is the primary goal of union leaders. The unions contend that they need union security contracts to strengthen their position with employers, to protect them against rival unions, and to assist them in organizing unorganized workers. The leaders further state that if all the workers in a bargaining unit are members of the union, they are in a position to exercise control and fulfill the obligations to the employer that they assumed under the labor contract. The union leaders feel that compulsory membership promotes industrial peace and improves labor management relations.

Unions enable a worker to voice his opinions with regard to wages, hours, and general working conditions. The unions feel that it is advantageous for a worker to join a union and that union membership should be compulsory. In addition, a union member must pay tribute to the union for representation. This practice has led to the incorporation of the agency shop [chapter II] provision in many labor agreements.

The unions state that any legal restrictions which prohibit or interfere with the negotiation of union security clauses deprive the union of the freedom to negotiate a contract; hence, industrial unrest

and poor labor management relations result. The negotiation of a union security agreement implies the acceptance of the union by management; however, right-to-work legislation prohibits union-management acceptance.

The largest single group of customers is composed of wage earners whose buying power is concentrated in their pay checks. The unions feel that by improving customer buying power they are building the economy. The unions contend that right-to-work laws weaken their ability to improve the economic status of the members and therefore weaken the economy of the community in which they exist.

The issues that have been examined are a reflection of the basic struggle presented by management or labor regarding right-to-work legislation and purely emotional rather than factual. They all contain elements of truth; however, the interpretation of the truth depends largely on where one's self-interests lie.

CHAPTER V

STATUS OF RIGHT-TO-WORK STATES

Wages and Personal Income

> If one were able to establish that right-to-work states as a whole showed economic gains or losses relative to other states and that such gains and losses were not shared by similarly situated states without such laws, then one might reasonably attribute some part of the effect to the presence or absence of such laws.[1]

The right-to-work states are grouped into two geographical areas, one extending from Virginia through the southeast into Texas; the other area includes nine states in the Plains, Mountain, and Southwest Regions of the United States. Indiana is considered as part of the Great Lakes Region. The adoption of right-to-work legislation follows no particularly discernible economic, political, or social pattern. Proponents of right-to-work laws say that such laws stimulate the economy of the region and that wages in these areas have increased a pace faster than the national average. All right-to-work laws have had at least three years in existence upon which to base statistics. Wyoming passed right-to-work laws in February 1963.

An examination of the hourly wages in the manufacturing industries of right-to-work states reveals several interesting statistics. A comprehensive examination of the hourly wages (Table 6) beginning in 1950

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[1] Wason, p. 36.

TABLE 6

FINANCIAL STATUS OF RIGHT TO WORK STATES

	Manufacturing Industries[a]						Personal Income[b] Per Capita (dollars)					
	Average Weekly Earnings			Average Hourly Earnings								
	1960	1963	1964	1960	1963	1964	1940	1950	1955	1960	1962	1963
UNITED STATES	89.72	99.63	102.97	2.26	2.46	2.53	595	1491	1866	2217	2368	2449
Alabama	75.65	85.46	88.97	1.92	2.11	2.17	282	869	1199	1462	1557	1655
Arizona	99.14	107.87	109.62	2.46	2.67	2.72	497	1295	1696	2013	2141	2142
Arkansas	62.71	69.83	72.09	1.56	1.72	1.78	256	807	1087	1338	1510	1607
Florida	76.07	85.28	87.78	1.86	2.06	2.11	513	1287	1659	1967	2065	2111
Georgia	65.40	73.38	77.95	1.66	1.83	1.92	340	1017	1332	1609	1750	1864
Indiana	100.49	112.01	115.80	2.51	2.73	2.81	553	1520	1892	2188	2368	2481
Iowa	93.68	105.47	109.90	2.35	2.62	2.71	501	1449	1587	2022	2190	2302
Kansas	95.82	107.54	111.24	2.36	2.57	2.65	426	1380	1662	2060	2217	2255
Mississippi	60.50	68.28	71.46	1.52	1.69	1.76	218	733	994	1168	1285	1390
Nebraska	87.41	97.96	101.93	2.08	2.28	2.36	439	1472	1620	2129	2295	2312
Nevada	113.30	122.93	126.72	2.75	3.12	3.16	876	1938	2425	2791	3154	3386
North Carolina	61.14	68.38	71.58	1.54	1.68	1.75	328	1012	1285	1562	1738	1807
North Dakota	81.85	101.08	97.41	1.97	2.39	2.31	350	1268	1389	1749	2212	2050
South Carolina	63.27	70.11	73.98	1.57	1.71	1.80	307	882	1147	1379	1530	1588
South Dakota	90.90	101.70	106.70	2.02	2.24	2.34	359	1216	1279	1845	2025	1886
Texas	89.19	97.29	100.91	2.17	2.35	2.42	432	1339	1645	1917	2019	2068
Utah	98.89	109.21	111.91	2.46	2.71	2.77	487	1282	1556	1910	2087	2119
Virginia	70.62	80.16	83.84	1.77	1.96	2.04	466	1234	1571	1852	1977	2057
Wyoming	95.25	102.49	108.57	2.54	2.69	2.82	608	1623	1810	2284	2440	2475

[a] Statistical Abstract of the United States, 1965, U. S. Department of Commerce, Bureau of the Census, 86th Annual Edition (Washington: U. S. Government Printing Office, July, 1965), p. 241.

[b] Ibid., p. 334.

reveals that right-to-work states paid 21 cents below the United States average of $1.47 per hour. In 1964, the average hourly wages in the right-to-work states were twenty-four cents an hour less than the national average of $2.53. Between 1950 and 1964 the maximum difference in hourly wages between the national average and that prevalent in the right-to-work states was twenty-six cents (in 1955); the smallest difference has been twenty-one cents. It is interesting to note that the national average in hourly wages has improved over the 1950 level by 72%, whereas the right-to-work states have increased by 82% over the same period.

The pattern of weekly wages has followed a similar trend. In 1950 the average weekly wage of workers in right-to-work states was $52.47. In 1964 the average weekly wage rose to $95.00, $7,97 below the national average of $102.97. The difference between weekly wages in the right-to-work states and the national average rose from $6.86 in 1950 to $7.97 in 1964. The year 1958 produced the smallest difference in weekly wages when the gap closed to $6.39. Data are not available to substantiate the fact that wages paid in right-to-work states have increased at a percentage faster than nationwide averages. The gains in real dollars have been smaller than the national average.[1]

The per capita personal income trend in the right-to-work states has been behind the national average and has behaved much the same as the trend in hourly wages. In 1947 the average per capita personal income for the nineteen right-to-work states was $230 below the national average.

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[1] Statistical Abstract of the United States, Washington, D.C.: U. S. Department of Commerce, 1965, 86th ed., p. 241.

By 1950 the difference had increased to $281, and in 1963 in the right-to-work states the per capita income was $509 below the national average. From a percentage standpoint the national average between 1950 and 1963 grew 64% and the right-to-work states expanded their per capita income by 60%. In 1963 two right-to-work states, Nevada and Wyoming, had per capita incomes that were above the national average.[1]

Evidence presented seems to indicate the right-to-work states have been able to improve their economic status without the benefit of compulsory unionism. The right-to-work states have not been able to equal the national averages in income, but it is significant to note that their rate of increase is greater than the national average.

The increase in wages and income in the right-to-work states may be due to national wage patterns established in negotiations between large companies and unions, or the increased minimum wage levels guaranteed by the Fair Labor Standards Act. The increase in the wage levels can be attributed partially to the shift from agricultural to nonagricultural industries.

Trends in Union Membership

It is difficult to attribute any change in total union membership to right-to-work legislation. The impact of right-to-work laws will not be immediately measurable because the laws do not invalidate existing contracts, but prohibit their future negotiation or extension. Any member forced to join a union will be able to cancel his membership.

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[1] Ibid., p. 335.

Table 7 shows eight states with a net gain in membership, eight states with a net loss, and three states remained unchanged from 1958 to 1962.

In the states where membership was reduced, right-to-work legislation had been in effect for approximately six to ten years, with the exception of Kansas, Utah, and Mississippi. Those union members who were dissatisfied with unionism might be presumed to have canceled their memberships earlier in most states. The impact of the legislation might be tested in Indiana and Kansas which passed their state right-to-work legislation in 1957 and 1958, respectively. Between 1958 and 1962, union membership increased in Indiana by 8% or 26,000 members while in Kansas membership dropped by 65,000 members or 43.4%.

Labor leaders feel that right-to-work legislation slows union growth. As shown in Table 7, where right-to-work legislation was non-existent, membership increased in nine states, decreased in twenty states, and remained unchanged in four states. In the non-right-to-work states membership in unions between 1958 and 1962 dropped in 67% of the states. From these figures it may be possible to advance the theory that membership in right-to-work states is less likely to be adversely affected than in states without such laws.[1]

A comparison of union membership between 1958 and 1962 in the right-to-work states and the total AFL-CIO figures shows a slight decline. The changes were as follows:

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[1] Ibid., p. 33.

TABLE 7

TREND IN UNION MEMBERSHIP BY STATES, 1958-1962

State, With Date Right-to-Work Law Was Enacted		1958 (000)	1960 (000)	1962 (000)	Trend 1958-1962
Total Membership Reported[1]		13,881.0[2]	13,877.8	13,379.8	Down
Alabama	1953	185.0	185.0	185.0	None
Alaska		n.a.	22.3	30.0	Down
Arizona	1946	40.0	80.0	76.0	Up
Arkansas	1944	72.0	72.0	72.0	None
California		1,600.0	1,350.0	1,400.0	Down
Colorado		114.2	90.0	108.0	Down
Connecticut		155.0	200.0	185.0	Up
Delaware		29.0	28.0	16.0	Down
Florida	1944	160.0	150.0	150.0	Down
Georgia	1947	115.0	115.0	120.0	Up
Idaho		17.0	20.0	14.0	Down
Illinois		1,200.0	1,200.0	1,250.0	Up
Indiana	1957	323.1	350.0	350.0	Up
Iowa	1947	130.0	135.0	100.0	Down
Kansas	1958	150.0	100.0	85.0	Down
Kentucky		140.0	132.0	135.0	Down
Louisiana		150.0	130.0	130.0	Down
Maine		61.0	68.0	58.0	Down
Maryland[3]		300.0	300.0	275.0	Down
Massachusetts		400.0	600.0	525.0	Up
Michigan		800.0	700.0	750.0	Down
Minnesota		250.0	250.0	300.0	Up
Mississippi	1954	50.0	45.0	45.0	Down
Missouri		500.0	450.0	400.0	Down
Montana		45.0	50.0	30.0	Down
Nebraska	1946	70.0	65.0	50.0	Down
Nevada	1951	10.1	16.0	18.0	Up
New Hampshire		45.0	50.0	50.0	Up
New Jersey		575.0	500.0	500.0	Down
New Mexico		30.0	17.0	35.0	Up
New York		2,000.0	2,000.0	2,000.0	None
North Carolina	1947	80.0	80.0	80.0	None
North Dakota	1947	7.2	18.0	15.0	Up
Ohio		1,250.0	1,000.0	1,000.0	Down
Oklahoma		82.0	50.0	65.0	Down
Oregon		200.0	160.0	140.0	Down
Pennsylvania		n.a.	1,500.0	1,250.0	Down
Rhode Island		50.0	50.0	60.0	Up

TABLE 7--Concluded

State, With Date Right-to-Work Law Was Enacted		1958 (000)	1960 (000)	1962 (000)	Trend 1958-1962
South Carolina	1954	35.0	35.0	40.0	Up
South Dakota	1946	15.0	17.0	17.0	UP
Tennessee	1947	175.0	140.0	150.0	Down
Texas	1947	375.0	375.0	350.0	Down
Utah	1955	60.0	45.0	45.0	Down
Vermont		10.0	7.5	9.5	Down
Virginia	1947	95.0	95.0	100.0	Up
Washington		100.0	350.0	250.0	Up
West Virginia		70.0	70.0	95.0	Up
Wisconsin		301.0	400.0	264.0	Down
Wyoming		18.0	15.0	17.0	Down

[1]Estimate by State Federation of Labor in each State.

[2]National data figure used. Total without Pennsylvania 13,289.5 million.

[3]Included District of Columbia.

Source: U. S. Bureau of Labor Statistics, Directory of National Unions in the United States, 1959; same, 1961; same, 1963.

	1958	1960	1962
	(thousand members)		
Total AFL-CIO membership	13,881.0	13,977.8	13,375.5
Membership in right-to-work states	2,147.3	2,118.0	2,048.0
Percentage change in right-to-work states	15.6	15.3	15.3

These figures are inconclusive, and cannot be used to substantiate a claim that right-to-work legislation causes members to discontinue their memberships.

Pressure on Union Finances

Unions need a regular income to conduct their business operations; the main source of union income is from membership dues. In recent years automation, industry relocation and other factors have had an adverse effect on union memberships. Unions in these industries have been forced to curtail organizing efforts, lay off representatives, and reduce programs because of the reduced income from declining membership. Requests to union members to increase dues to offset loss of income puts union officials in an unpopular position.

An examination of compulsory union membership provisions and their effect on union membership, income, and power reveals several facts:

1. In the absence of compulsory membership provisions, a substantial percentage of American workers will not join unions.

2. Union security provisions thus add significantly to union membership and dues.

3. Once workers join unions, they tend to remain members even in the absence of union security provisions.[1]

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[1]U. S. Congress, Senate, National Labor Policy, Document 32, p. 172.

In the elections that were conducted by the National Labor Relations Board it was found that between five and twelve percent of the eligible workers were opposed to the union shop, and approximately twelve to nineteen percent elected not to participate in the voting.[1] From these statistics it is reasonable to assume that a fair number of workers would rather not be committed to the payment of union dues. The loss of union income has a twofold effect. The costs of operation, administration of the contract, and collective bargaining remain constant. As union income falls because of declining membership, the current members become disturbed over the fact that the benefits accrue to free riders. The union loses more members and the recruitment of new employees becomes more difficult. The original loss of income tends to produce a further decrease in union funds.

The larger plants for the most part are unionized and offer little opportunity for increases in membership. In the small plants, where there is a possibility for increasing membership, union organization and administration costs are proportionately heavier, which further increases the burden on union finances.

There has been very little research in how the states' right-to-work laws affect unions. In the words of Professor James W. Kuhn, " . . . we believe that they [right-to-work laws] have a decided and substantial effect upon union strength and bargaining, but we cannot prove it."[2]

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[1] Wason, p. 66.

[2] Ibid., p. 68.

CHAPTER VI

CONCLUSIONS

The historic struggle that has divided union and management forces continues unresolved. An interesting fact about right-to-work legislation is that a close examination of the arguments both for and against reveals that there is only limited basis in fact for most of them. The arguments presented by both union and management groups regarding the issue are basically rationalized and emotional rather than factual.

The arguments for right-to-work laws is normally presented as a moral crusade for the freedom of the individual to choose whether or not to join a labor organization. Management forces point to the noble democratic traditions of freedom of conscience, choice, association, and religion as evidence in support of right-to-work legislation.

The unions counter that it is undemocratic for nonunion members to share in the benefits won through collective bargaining, and that compulsory unionism is in reality democratic and ethically right. They make light of management's concern for the rights of employees and accuse management of hypocrisy concerning this issue. The moral appeal has been a difficult concept for unions to oppose, since compulsion in any form is generally an anathema to the spirit of American democracy and individuality.

The major issues are far from being settled, since both sides have been generally unable to substantiate their positions either quantitatively

or qualitatively. The problem of trying to find a factual basis also extends to the area of measuring the effects of existing right-to-work legislation. In this area various statistics can be manipulated and quoted to prove or disprove statements of either side, depending upon which statistics are chosen and how they are interpreted.

Among all the conflicting issues is the basic issue of union security and its ultimate relationship to collective bargaining power. Compulsory unionism, or union security, means numerical and financial power for a union that it might not otherwise have if workers are free to reject membership and retain employment.

It is unlikely that any action will be taken to either modify or repeal the existing legislation. The campaign both for and against right-to-work legislation will depend upon prevailing national and state political pressures and corresponding public opinion.

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